

THOMAS CONNELL

IBLA 83-398

Decided August 22, 1983

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 30526.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent. The offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

2. Administrative Procedure: Burden of Proof--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Rentals--Rules of Practice: Burden of Proof

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

APPEARANCES: Thomas Connell, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Thomas Connell has appealed from the decision of the Eastern States Office, Bureau of Land Management (BLM), dated December 9, 1982, rejecting noncompetitive oil and gas lease offer ES 30526 because of his failure to submit sufficient advance annual rental.

On December 10, 1981, appellant filed a noncompetitive oil and gas lease offer for land situated in T. 14 N., R. 4 E., Washington meridian, Claborn County, Mississippi, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). The land requested by appellant

in his lease offer was described as "Secs. 30: SW 1/4, total area 160 acres." Appellant submitted \$160 for the first year's advance rental payment.

BLM rejected appellant's offer because the land applied for actually comprised 179.99 acres, and, at \$1 per acre, the first year's advance rental payment was deficient by more than 10 percent.

In his statement of reasons on appeal, appellant made the following contention:

In this case acreage checked on the plat of survey showed uncertainties. Two plats gave 2 different acreages for Section 30. One showed 440.65 acres while the other showed 486 acres. The confusion was continued. Three of the quarterquarters were more or less regular covering 40 40 and 38 acres each. However, the SW 1/4 SW 1/4 (lot 10) showed more acreage. But this was also confusing. It showed 51.99 or 61.99 acres depending which figure you accepted. The 5 was struck over by a 6 or visa versa.

[1] A noncompetitive oil and gas lease offer is properly rejected where the offeror fails to tender the full first year's advance rental with his offer, as required by 43 CFR 3103.3-1, 1/ and the amount of rental tendered is deficient by more than 10 percent of the proper amount due. See, e.g., James M. Chudnow, 62 IBLA 19 (1982).

[2] The regulation provides that "[e]ach offer \* \* \* shall be accompanied by full payment \* \* \* based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision." 43 CFR 3103.3-1. As stated above, appellant asserts that strike overs on the plat have created ambiguities with respect to the acreage in lot 10. A reasonable interpretation of 43 CFR 3103.3-1 is that if ambiguity can be shown, a filing accompanied by a first year's rental based upon an assumption of 40 acres for each smallest subdivision is proper. However, this ambiguity must be proven by the applicant. The mere allegation of an ambiguity is not sufficient.

1/ This section, as in effect at the time that appellant filed, is as follows:

"§ 3103.3-1 Rental requirements.

"Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease."

BLM has recently amended the regulations covering oil and gas leasing on Federal lands. The new, comparable provision which will be effective Aug. 22, 1983, is found at 43 CFR 3103.2-1.

The official plat located in the Eastern States Office, BLM, Alexandria, Virginia, shows an area of 179.99 acres for the SW 1/4 of that section apportioned among lots 3, 4, 9, and 10. The plat depicts the following acreage:

Sec. 30, Lot 3 - 40 acres  
 Lot 4 - 40 acres  
 Lot 9 - 38 acres  
 Lot 10 - 61.99 acres  
 Total area 179.99 acres

No evidence could be found that any of the digits in that portion of the map depicting lot 10 had been stricken over or altered in any way. The figure 61.99 was clear and not found to be subject to misinterpretation. 2/ In light of the fact that no evidence to the contrary was submitted by appellant, we must find that there was, in fact, no proven ambiguity with respect to the acreage. The provisions of 43 CFR 3103.3-1 with respect to subdivisions having unknown acreage do not apply. As the rental amount submitted was 89 percent of the amount required the offer was deficient in the first year's rental by more than 10 percent. 3/ Accordingly, BLM properly rejected appellant's offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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R. W. Mullen  
 Administrative Judge

We concur:

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Anne Poindexter Lewis  
 Administrative Judge

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Franklin D. Arness  
 Administrative Judge  
 Alternate Member

2/ The plat is a public document available for inspection at the Eastern States Office, BLM, Alexandria, Virginia. Judge Mullen inspected the original plat and a copy of that plat was made available for the other Judges.

3/ The acreage was 179.99. Therefore, \$180 should have been submitted.  $160/180 = 88.8$  percent, or 11.2 percent below the required amount.

